

# ATTORNEY FEE AWARDS FOR UNREASONABLE DENIAL OF CLAIMS



W.Va. Code §23-2C-21(c) provides that the Office of Judges may order BrickStreet Mutual, or a self-insured employer, or any private insurance carrier, to pay reasonable attorney fees and expenses to claimants when the Office of Judges determines that the original denial of a claim or treatment request was unreasonable.

The Office of Judges Procedural Rule, 93 CSR 1, §19, provides the procedure for requesting approval of an attorney fee. The Rule may be accessed through the main menu of this website. Key provisions include:

- The relief is only available for three types of protests:
  - Denied claim application
  - Denied treatment request
  - Denied initial temporary total disability (TTD)
- A request for attorney fees can only be filed **AFTER** the initial claim adjustor's decision has been reversed by the Office of Judges, Board of Review, or Supreme Court of Appeals.
- The request must be filed within ninety (90) days of the final decision reversing the claim adjustor.
- The claim adjustor must be able to show that he or she had a legal or factual basis to deny initially the claim or the carrier is ordered to pay an attorney fee.

- New evidence submitted during the appeal process, which the claim adjustor did not originally have, will not be considered as part of the attorney fee award process.
- A claimant's attorney may still charge a permissible legal fee to the claimant even if an attorney fee is not collected from the insurance carrier.
- The Office of Judges ruling does not set the actual amount of the attorney fee and expenses. If attorney fees are awarded under this process, the claimant's attorney must then submit a fee request to the insurance carrier for approval and payment.